

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GUSTAVO CONTRERAS,

Case No. 2:14-cv-01129-JAD-NJK

Petitioner,

ORDER

vs.

RENE BACKER, *et al.*,

Respondents.

Petitioner has filed a habeas petition under 28 U.S.C. § 2254 without properly commencing the action by paying the filing fee or filing a pauper application.

Petitioner states in a cover letter that he was sending the filing fee under separate cover. At the time of the preparation of this order, no filing fee has been received by the Clerk for this action. To properly *commence* a federal action, either a filing fee or a properly completed pauper application must be tendered at the *commencement* of the action.

It does not appear that a dismissal without prejudice would materially impact the analysis of the application of the limitation period in a promptly filed new action or otherwise cause substantial prejudice.¹ This improperly commenced action therefore will be dismissed without prejudice.

¹The papers submitted and the online docket records of the state courts reflect the following.

Petitioner Gustavo Contreras challenges his Nevada state conviction, pursuant to a jury verdict, of battery by a prisoner. The state supreme court affirmed the conviction on direct appeal in a September 12, 2012, order. The time period for seeking *certiorari* review in the United States Supreme Court expired on December 11, 2012. Meanwhile, a corrected judgment of conviction was filed on October 24, 2012, and the time for any appeal from the corrected judgment expired on November 26, 2012. Petitioner filed a state post-conviction petition on April 12, 2013, that remained pending through the issuance of the remittitur concluding the post-conviction appeal on July 15, 2014.

(continued...)

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